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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY JIT
DEPUTY

IN THE
COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN re PERSONAL RESTRAINT of: NO. 56855-1-II

Jeffery Joel Dicks,

PETITIONER.

REPLY BRIEF IN
SUPPORT OF PERSONAL
RESTRAINT PETITION

I. INTRODUCTION

Petitioner Jeffery Dicks has filed his personal restraint petition and supporting documents. Thereafter, the State of Washington filed its state's response to personal restraint petition and supporting documents. This memorandum is filed in reply to the state's response.

II. DISCUSSION

Washington State Constitution grants this honorable court jurisdiction to hear petitions for writs of habeas corpus and other petitions. See Wash. Const., Art. 4, § 4. To implement this jurisdiction at the appellate level, Washington has adopted the personal restraint petition. See RAP 16.3-16.15; *Toliver v. Olson*, 109 Wn.2d 607, 611, 746 P.2d 809 (1987).

The Washington Supreme Court has rejected many formal impediments that could be used to block the consideration of personal restraint petitions. See *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 807-14, 792 P.2d 506 (1990). To receive collateral review of a conviction or sentence on constitutional grounds, a personal restraint petitioner must satisfy a "threshold burden of demonstrating actual and substantial prejudice." Cook, 114 Wn.2d at § 10 (citing *In re Pers. Restraint of Haverty*, 101 Wn.2d 498, 504, 681 P.2d 235 (1984)). To receive collateral review of a

conviction or sentence on nonconstitutional grounds, a personal restraint petition must establish that the claimed error constitutes "a fundamental defect which inherently results in a complete miscarriage of justice."

COOK, 114 W.W.R. at 812.

This honorable court has three options regarding the issues raised in DICK's personal restraint petition:

1. If a petitioner fails to meet the threshold burden of showing actual prejudice arising from constitutional error, the petition must be dismissed;
2. If a petitioner makes at least a prima facie showing of actual prejudice, but the merits of the contention cannot be determined solely on the record, the court should remand the petition for a full hearing on the merits or for a reference hearing pursuant to RAP 16.11(A) and RAP 16.12;
3. If the court is convinced a petitioner

has proven actual prejudicial error,
the court should grant the personal
restraint petition without remanding
the case for further hearings.

In re Pers. Restraint of Rice, 118 Wn.2d
876, 885, 828 P.2d 1086 (1992) (citing In
re Pers. Restraint of Hens, 99 Wn.2d
80, 88, 660 P.2d 263 (1983)).

Here, the state fails to respond to
the argument that the community custody
condition that allows the probation
officer to determine which areas or
the defendant may frequent should
be stricken. Dicks takes this acquies-
cence in his position, given the state's
affirmative obligation to rely upon
authority to support its positions.

A. THE STATE FAILS TO RESPOND TO THE
CLAIM THAT THE COMMUNITY CUSTODY
CONDITION PROHIBITING DICKS FROM
FREQUENTING AREAS WHERE MINOR
CHILDREN ARE KNOWN TO CONGREGATE
IS VOID FOR VAGUENESS.

THE STATE APPARENTLY ACKNOWLEDGES THAT THE CASE OF STATE V. CRUWIS, 191 Wn. App. 644, 652-53, 364 P.3d 830 (2015) APPLIES HERE, AND THAT THE CONDITION IS UNCONSTITUTIONALLY VAGUE AND SHOULD BE STRICKEN. DILKU SAYS THAT THE STATE APPARENTLY CONCEDES THIS POINT, BECAUSE HE SEES NO ARGUMENT IN OPPPOSITION.

IN THE PETITION, DILKU ARGUED THAT TWO OF THE DEFENDANT'S COMMUNITY CUSTODY CONDITIONS THAT HE NOT LOITER OR FREQUENT PLACES WHERE CHILDREN CONGREGATE ARE UNCONSTITUTIONALLY VAGUE AND SHOULD BE STRICKEN. SEE CONDITIONS 12 AND 25.

THE STATE'S FAILURE TO MAKE ANY ARGUMENT IN OPPOSITION TO THESE CLAIMS ESSENTIALLY CONCEDES THEM. RAP 10.3-(A)(5); RAP 10.3(b); STATE V. FORTUN, 94 Wn.2d 754, 626 P.2d 504 (1980) (FAILURE TO PROVIDE ARGUMENT AND CITATION OF LEGAL AUTHORITY PRECLUDES APPELLATE CONSIDERATION OF ERROR).

III. CONCLUSION

For all of the foregoing reasons, the personal restraint petition should be granted.

Dated: July 21, 2022.

Respectfully submitted,

Jeffery J. Dicks, petitioner

CERTIFICATE OF SERVICE

I certify that on the day of July, 2022, a true and correct copy of the foregoing REPLY BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION was served upon the following individual by depositing same in the United States mail, first class postage prepaid:

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Jeffrey J. Dilks, Petitioner

submitted by:

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